

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 433 OF 2005

SHRI VITHU M. MORAJKER AND ANR., ...Petitioners

Versus

SMT. FRANSKIN FERNANDES AND 2 Respondents
ORS.,

Shri Zeller De Souza, Advocate for the Petitioners. Mrs. A. A. Agni
Advocate For Respondent No. 1, 2,

Coram:- D. D. SINHA, J.

Date:- 28th November, 2005

P.C.:

Heard Mr.Z. De Souza, learned Advocate for the Petitioners and Mrs. Agni, learned Advocate for the respondents.

2. Writ Petition is directed against the Order dated 8th November, 2005 whereby the following issue namely :- " Whether order in temporary injunction to be passed without deciding application for amendment ?" is answered in the negative.

3. The learned counsel for the petitioners states that in the instant case the respondents/plaintiffs have filed an application for temporary injunction. The matter was fixed for submitting written arguments. The present petitioners/original defendants have submitted their written arguments. However the respondents/plaintiffs failed to file their written arguments and instead moved an application seeking permission to amend the plaint under Order 6, Rule 17 of C.P.C. The learned counsel for the pletitioners states that at this stage the petitioners/original defendants filed an application on the basis of which the above referred issue is framed by the trial Court. It is contended that at this stage it is not proper for the trial

Court to grant permission to the respondents to file an application for amendment when the matter is fully heard on temporary injunction application and ex-parte temporary injunction has already been obtained by the plaintiffs. It is therefore contended that the order impugned is bad in law and the trial Court be directed to decide the application for temporary injunction before considering the application for amendment moved by the respondents/plaintiffs.

4. The learned counsel for the respondents/plaintiffs on the other hand, supported the impugned order.

5. In the backdrop of the above referred facts, it is evident that till this time the trial Court has not considered the application for amendment submitted by the respondents/plaintiffs and therefore it will be premature to adjudicate the issue about the legitimacy of the prayer made in the application for amendment and it will be appropriate for the trial Court to first consider and decide the application for grant of permission to amend, according to law and procedure applicable in this regard and if the order passed by the trial Court on this application is adverse to the petitioners, they will be entitled to challenge the same.

In these circumstances, the petition suffers from merits and is dismissed.

D. D. SINHA, J.

sl.